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Qlay Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

QLAY CO.,

Plaintiff

v.

ADHJNJAVA, ALEXANDRA LASEK,
BAOQINGXIANKAIYANJIANCAPIFA,
BEIXIN LAKE MAOZI RESTAURANT,
BYBY4, CHAIWELL, CONNOR
WALTERS, DAAN SHIMIQIWANJUDIAN,
FASHION FLASHSTAR, FUJIANHAISHAI,
GAOTANGXIANYIPINXUANJIUDIAN,
GIN-BACK, GOBEN, GSCWORLDIDY,
HANGZHOULIN, HAYDEN JOHNSONA,
HEFEISHILUYANGQUCEYONGTUSHUD
IAN, HEYUN AGRICULTURE AND
FORESTRY DEVELOPMENT, HJC280036,
HOUXINLUO, HWZ971305, HXY399063,
HYH7100628, HZH7108226, IHUIO7441,
IJUNJIEKEJIYOUXIANGONG, JIAN XIN
LIU,
JIANGBEIXINQUJIACAI Xin JIANCAIDIA
N, JILUNHUADIANZI, JIOMI,
KARL B RODRIQUEZ, KEITH TAYLOR,
KERUN TRADING,
KUIWENQULIYUANRUIMAIGUANGGA
OSHEJIZHONGXIN, LEMETVFB,

CIVIL ACTION No.
21-cv-1505 (ER)

[PROPOSED]
FINAL DEFAULT JUDGMENT AND
PERMANENT INJUNCTION ORDER

LINJIANFANG, LTLNMDURPL,
LWH182209, MICHELLE C LEIGHTON,
MINGLANGZHAOMING80, MONTAGUE
WALT, MOTIVATEDVIBRANT,
MULTICOLOURED, OTTO.GAY,
PAPAMA, PLAYTRENDHOME,
PLINCALLY, PORT ST, QIGNSHAN,
QINANXIANLINJUNYOUNONGYEYOUX
IANGONGSI, QINGYUHAI, SDFDSL,
SHANGHAIYOUCHONGCANYINFUWUY
OUXIANGONGSI,
SHANTOUSHICHENGHAIQUHUALEWA
NJUYOUXIANGONGSI,
SHANXISHENGRIGONGMAO CO LTD,
SHIJIAZHUANGKEYUNHUAGONGKEJI
YOUXIANGONGSI, STEPHENV.,
WEIYEJILIANGHENGXI, WHANEAR,
WXH170082,
XIANYANGSHIWEICHENGQUSHUSHUO
FUZHUANGDIAN, XINCHENGUS,
XINTENGF,
XIXIANXINQUFENGDONG84,
XUEQINUS,
YANGRUIJIANGONGYOUXIANGONGSI,
YITONGMANZUZIZHIXIANYITONGZHE
NWENTIANZHERIYONGPIND,
YUANHUIFUCANYINFUWUYOUXIANG
ONGSI, YUNXIAN MANICURE and
YUXINMEI,

Defendants

GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Docket Entry Number</u>
Plaintiff or Qlay	Qlay Co.	N/A
Defendants	ADHJNJVA, Alexandra Lasek, baoqingxiankaiyanjiancaipifa, Beixin Lake maozi restaurant, BYBY4, Chaiwell, CONNOR WALTERS, daan shimiqianjudian, Fashion FlashStar, fujianhaishai, gaotangxianyipinxuanjiudian, Gin-Back, GoBen, GscworldDIY, hangzhoulin, Hayden Johnsona, hefeishiluyangquceyongtushudian, Heyun Agriculture and Forestry Development, HJC280036, houxinluo, HWZ971305, HXY399063, HYH7100628, HZH7108226, IHUIO7441, IJUNJIEKEJIYOUXIANGONG, Jian Xin Liu, jiangbeixinqujiacaixinjiancaidian, jilunhuadianzi, JioMi, Karl B Rodriquez, Keith Taylorr, Kerun Trading, kuiwenquliyuanruimaiguanggaoshejizhongxin, LEMETVFB, Linjianfang, LtLnMDUrpl, LWH182209, Michelle C Leighton, minglangzhaoming80, Montague Walt, MOTIVATEDVIBRANT, Multicoloured, Otto.Gay, PaPama, playtrendhome, PLincally, Port St, QIGNSHAN, qinanxianlinjunjounongyeyouxiangongsi, qingyuuhai, sdfdsl, ShangHaiYouChongCanYinFuWuYouXianGongSi, shantoushichenghaiquhualewanjuyouxiangongsi, shanxishengrigongmao Co Ltd, shijiazhuangkeyunhuagongkejiyouxiangongsi, StephenV., weiyejilianghengxi, Whanear, WXH170082, XianYangShiWeiChengQuShuShuoFuZhuangDian, XinChengUS, xintengF, xixianxinqufengdong84, xueqinUS, yangruijianggongyouxiangongsi, yitongmanzuzizhixianyitongzhenwentianzheriyongpinD, yuanhuifucanyinfuwuyouxiangongsi, Yunxian manicure and yuxinmei	N/A
Defaulting Defendants	ADHJNJVA, Alexandra Lasek, baoqingxiankaiyanjiancaipifa, Beixin Lake maozi restaurant, BYBY4, Chaiwell, CONNOR WALTERS, daan shimiqianjudian, Fashion FlashStar, fujianhaishai, gaotangxianyipinxuanjiudian, Gin-Back, GoBen, GscworldDIY, hangzhoulin, Hayden Johnsona, hefeishiluyangquceyongtushudian, Heyun Agriculture and Forestry Development, HJC280036, houxinluo, HWZ971305, HXY399063, HYH7100628,	N/A

	HZH7108226, IJUNJIEKEJIYOUXIANGONG, Jian Xin Liu, jiangbeixinqujiacaixinjiancaidian, jilunhuadianzi, JioMi, Karl B Rodriquez, Keith Taylor, Kerun Trading, kuiwenquliyuanruimaiguanggaoshejizhongxin, LEMETVFB, Linjianfang, LtLnMDUrpl, LWH182209, Michelle C Leighton, minglangzhaoming80, Montague Walt, MOTIVATEDVIBRANT, Multicoloured, Otto.Gay, PaPama, playtrendhome, PLincally, Port St, QIGNSHAN, qinanxianlinjunjunyounongyeyouxiangongsi, qingyuuhai, sdfds1, ShangHaiYouChongCanYinFuWuYouXianGongSi, shantoushichenghaiquhualewanjuyouxiangongsi, shijiazhuangkeyunhuagongkejiyouxiangongsi, StephenV., weiyejilianghengxi, Whanear, WXH170082, XianYangShiWeiChengQuShuShuoFuZhuangDian, XinChengUS, xintengF, xixianxinqufengdong84, xueqinUS, yangruijiangongyouxiangongsi, yitongmanzuzizhixianyitongzhenwentianzheriyongpinD, yuanhuifucanyinfuwuyouxiangongsi, Yunxian manicure and yuxinmei	IHUIO7441,
Amazon	Amazon.com, a Seattle, Washington-based, online marketplace and e-commerce platform owned by Amazon.com, Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York	N/A
Sealing Order	Order to Seal File entered on February 19, 2021	Dkt. 1
Complaint	Plaintiff's Complaint filed on February 19, 2021	Dkt. 7
Application	Plaintiff's <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on February 19, 2021	Dkts. 13-16
Clay Dec.	Declaration of Chad Wild Clay in Support of Plaintiff's Application	Dkt. 14
Drangel Dec.	Declaration of Jason M. Drangel in Support of Plaintiff's Application	Dkt. 15

TRO	1) Temporary Restraining Order; 2) Order Restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service; and 5) Order Authorizing Expedited Discovery entered on February 19, 2021	N/A
PI Show Cause Hearing	March 22, 2021 hearing to show cause why a preliminary injunction should not issue	N/A
PI Order	March 22, 2021 Preliminary Injunction Order	Dkt. 6
User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as Amazon, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
CWC	Chad Wild Clay	N/A
CWC Content	YouTube videos on the Chad Wild Clay YouTube Channel, best known for its action, adventure and mystery videos starring Chad Wild Clay and Vy Qwaint	N/A
CWC Mark	U.S. Trademark Registration No. 6,012,760 for "  " for a variety of goods in Classes 9, 14, 16, 18, 22, 25 and 35	N/A
CWC Products	A variety of consumer products, including t-shirts, hoodies, backpacks and other gear, bearing the CWC Mark	N/A
Counterfeit Products	Products bearing or used in connection with the CWC Mark, and/or products in packaging and/or containing labels bearing the CWC Mark, and/or bearing or used in	N/A

	connection with marks that are confusingly similar to the CWC Mark and/or products that are identical or confusingly similar to the CWC Products	
Infringing Listings	Defendants' listings for Counterfeit Products	N/A
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as Amazon.com, Inc., Amazon Payments, Inc. ("Amazon Pay"), PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	N/A
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly, by Amazon, such as Amazon.com, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
Defendants' Frozen Assets	Defendants' Assets from Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action	N/A
Plaintiff's Motion for Default Judgment	Plaintiff's Application for an Order to Show Cause Why Default Judgment and a Permanent Injunction should not be entered Against Defaulting Defendants filed on July 20, 2021	TBD
Futterman Aff.	Affidavit by Danielle (Yamali) Futterman in Support of Plaintiff's Motion for Default Judgment	TBD

This matter comes before the Court by motion filed by Plaintiff for the entry of final judgment and permanent injunction by default against Defaulting Defendants for Defaulting Defendants' trademark infringement, trademark counterfeiting, false designation of origin, passing off and unfair competition and related state and common law claims arising out of Defaulting Defendants' unauthorized use of Plaintiff's CWC Mark, without limitation, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of Counterfeit Products.¹

The Court, having considered the Memorandum of Law and Affidavit of Danielle (Yamali) Futterman in support of Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendant, the Certificates of Service of the Summons and Complaint, the Certificate of the Clerk of the Court stating that no answer has been filed in the instant action, and upon all other pleadings and papers on file in this action, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Defaulting Defendants' Liability

1) Judgment is granted in favor of Plaintiff on all claims properly pled against Defaulting Defendants in the Complaint;

II. Damages Awards

1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages award requested in its Motion for Default Judgment, the Court finds such an award to be reasonable and Plaintiff is awarded statutory damages in the amount of \$50,000.00

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary.

(“Defaulting Defendants’ Individual Damages Award”) against each of the sixty-nine (69) Defaulting Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act, plus post-judgment interest, for a total of Three Million Four Hundred Fifty Thousand Dollars (\$3,450,000.00);

III. Permanent Injunction

- 2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defaulting Defendant, its respective officers, agents, servants, employees, successors and assigns and all persons acting in concert with or under the direction of Defaulting Defendants (regardless of whether located in the United States or abroad), who receive actual notice of this Order are permanently enjoined and restrained from:
 - A. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing one or more of the CWC Mark and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the CWC Mark;
 - B. directly or indirectly infringing in any manner Plaintiff’s CWC Mark;
 - C. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff’s CWC Mark to identify any goods or services not authorized by Plaintiff;
 - D. using Plaintiff’s CWC Mark, or any other marks that are confusingly similar to the CWC Mark on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;

E. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products; (ii) any computer files, data, business records, documents or any other records or evidence relating to:

- i. Defaulting Defendants' User Accounts and/or Merchant Storefronts;
- ii. Defaulting Defendants' Assets; and
- iii. the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products by Defaulting Defendants and by their respective officers, employees, agents, servants and all persons in active concert or participation with any of them; and

F. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Accounts, Merchant Storefronts or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.

- 2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defaulting Defendants must deliver up for destruction to Plaintiff any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defaulting Defendants that infringe any of Plaintiff's trademarks, copyrights or other rights including, without limitation, the CWC Mark, or bear any marks that are confusingly similar to the CWC Mark pursuant to 15 U.S.C. § 1118;
- 3) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Third Party Service Providers and Financial Institutions are permanently enjoined and restrained from:

- A. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to Defaulting Defendants' Assets from or to Defaulting Defendants' Financial Accounts; and
- B. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs III(1)(A) through III(C)(1) above.

IV. Dissolution of Rule 62(a) Stay

- 3) IT IS FURTHER ORDERED, as sufficient cause has been shown, the 30-day automatic stay on enforcing Plaintiff's judgment, pursuant to Fed. R. Civ. Pro. 62(a) is hereby dissolved.

V. Miscellaneous Relief

- 1) Defaulting Defendants may, upon proper showing and two (2) business days written notice to the Court and Plaintiff's counsel, appear and move for dissolution or modification of the provisions of this Order concerning the restriction or restraint of Defaulting Defendants' Frozen Assets, Defaulting Defendants' Additional Assets and/or Defaulting Defendants' Additional Financial Accounts;
- 2) Any failure by Defaulting Defendants to comply with the terms of this Order shall be deemed contempt of Court, subjecting Defaulting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;
- 3) The Court releases the Five Thousand U.S. Dollar (\$5,000.00) security bond that Plaintiff submitted in connection with this action to counsel for Plaintiff, Epstein Drangel, LLP, 60 East 42nd Street, Suite 2520, New York, NY 10165; and

- 4) This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

SO ORDERED.

SIGNED this 13th day of September, 2021, at 10:52 a.m.



HON. EDGARDO RAMOS
UNITED STATES DISTRICT JUDGE